

## **MINUTES**

### **MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON NATURAL RESOURCES**

**Call to Order:** By **CHAIRMAN WILLIAM CRISMORE**, on January 22, 2001  
at 3:00 P.M., in Room 317-C Capitol.

#### **ROLL CALL**

**Members Present:**

Sen. William Crismore, Chairman (R)  
Sen. Dale Mahlum, Vice Chairman (R)  
Sen. Vicki Cocchiarella (D)  
Sen. Mack Cole (R)  
Sen. Lorents Grosfield (R)  
Sen. Bea McCarthy (D)  
Sen. Ken Miller (R)  
Sen. Glenn Roush (D)  
Sen. Bill Tash (R)  
Sen. Mike Taylor (R)  
Sen. Ken Toole (D)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Nancy Bleck, Committee Secretary  
Mary Vandembosch, Legislative Branch

**Please Note:** These are summary minutes. Testimony and  
discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: HB 44, 1/18/2001; HB 45,  
1/19/2001; SB 270, 1/19/2001  
Executive Action: SB 31; SB 126; HB 44; HB 45

#### **HEARING ON HB 44**

**Sponsor:** REP. DICK HAINES (R), HD 63, Missoula

**Proponents:** Bud Clinch, Director, Montana Department of  
Natural Resources and Conservation

**Opponents:** None.

**Opening Statement by Sponsor:**

**REP. DICK HAINES, HD 63, Missoula,** spoke in support of **HB 44**. This bill was introduced by the request of the Department of Natural Resources and Conservation (DNRC) as a result of the Legislative Audit Division recommending executive agencies repeal archaic and obsolete state laws. This bill would eliminate licensing procedures for portable sawmills on forest lands. **DNRC** issued only nine licenses in recent years for a total income of eighteen dollars. **REP. HAINES** stated that Montana had a reduction law requiring operators to adequately dispose of flammable materials and current fire law liability statutes cover fire suppression costs reducing the need for this law. **REP. HAINES** advised only four or five portable saw mills were still in operation today and were not a big threat to the woods.

**{Tape : 1; Side : A; Approx. Time Counter : 0 - 3.2}**

**Proponents' Testimony:**

**Bud Clinch, Director, Montana DNRC,** spoke in support of **HB 44**. This law was originally enacted in 1931. During the 1940s and 1950s, portable sawmills were a very common occurrence in the forests. They basically moved around from timber stand to timber stand and did the milling in the woods. At that time it was intended to have a licensing provision so that the department could keep track of those mills and adequately address the fire hazard associated with those entities. Since that time, the wood products industry has changed substantially with the vast majority of all harvesting leading to the transportation of the wood products out of the woods to centralized milling facilities. The current hazard reduction program adequately addressed the few remaining portable sawmills and the limited fire liability situation, presented as a result of them, was negligible. **Mr. Clinch** urged passage of **HB 44**.

**{Tape : 1; Side : A; Approx. Time Counter : 3.3 - 4.9}**

**Opponents' Testimony:** None.

**Questions from Committee Members and Responses:**

**SEN. BEA MCCARTHY, SD 29, Anaconda,** questioned **Mr. Clinch** about Line 14 of **HB 44**; "WHEREAS, the Legislative Audit Division has recommended that executive agencies repeal archaic and obsolete state laws." **SEN. MCCARTHY** discussed whether state agencies can

repeal state laws, as she believed that was up to the Legislature.

**Mr. Clinch** responded by stating **SEN. MCCARTHY** was correct and he would work with the staffer on the wording of Line 14 of **HB 44** so it would be amended to read that executive agencies recommend legislation to repeal archaic and obsolete state laws.

**Closing by Sponsor:**

**Mr. Clinch** closed on **HB 44** without remarks.

**CHAIRMAN CRISMORE** closed the hearing on **HB 44**.

*{Tape : 1; Side : A; Approx. Time Counter : 5.0 - 6.7}*

**HEARING ON HB 45**

**Sponsor:**     **REP. JOHN E. WITT (R), HD 89, Carter**

**Proponents:**     **Annmarie Robinson, North Central Montana Regional  
Water Systems  
Steve Wade, Montana Rural Water Systems and  
Dry Prairie Rural Water Systems  
John Tubbs, Montana Department of Natural  
Resources and Conservation  
Dan Keil, Farmer and Chairman, North Central Rural  
Water Authority**

**Opponents:**     **None.**

**Opening Statement by Sponsor:**

**REP. JOHN E. WITT, HD 89, Carter,** spoke in support of **HB 45**.

**REP. WITT** stated there were currently two large water projects in northcentral and northeastern Montana, Rocky Boy's/North Central Montana Regional Water System Project and the Dry Prairie Rural Water System project. These projects were spread out over a ten to twelve year time period for completion. Federal appropriations were often not timely with the process of completing these projects. This bill was aimed at allowing the Department of Natural Resources and Conservation to fund these projects through the State Revolving Fund Program in order to keep the projects ongoing during the interim between federal financing.

*{Tape : 1; Side : A; Approx. Time Counter : 6.9 - 8.6}*

**Proponents' Testimony:**

**Annmarie Robinson, Bear Paw Development and Coordinator, Rocky Boy's/North Central Montana Regional Water Authority**, spoke in support of **HB 45** and utilized some large maps for visual presentation of the areas relative to this project. **Ms. Robinson** provided written testimony, **EXHIBIT(nas17a01)**, offering some facts about this regional water system and projected plan.

***{Tape : 1; Side : A; Approx. Time Counter : 8.7 - 11.1}***

**Steve Wade, Dry Prairie Rural Water Systems and Montana Rural Water Systems**, spoke in support of **HB 45**. People from the project were not able to attend today due to time constraints. Once authorized by Congress, these water system projects are structured to take at least ten years to construct. Congress authorized the Dry Prairie project last session. **Mr. Wade** stated this authorization is the federal government's promise to build the project. Currently these projects have to go back before Congress each year for an appropriation, and **HB 45** will allow the state to financially assist the projects without having to wait for the entire project's financial appropriations. These two projects are large and have significant economic development impact, not only in the very construction of the projects but also for the future. Currently these rural areas have poor quality drinking water and, of these projects, one will allow them to have clean water available to businesses who they may want to induce to come to that area. He urged support of **HB 45**.

***{Tape : 1; Side : A; Approx. Time Counter : 11.2 - 13.4}***

**John Tubbs, Bureau Chief, Montana Department of Natural Resources and Conservation, (DNRC)**, spoke in support of **HB 45**. Within the bureau **Mr. Tubbs** manages, they finance the state revolving fund loans for both wastewater and drinking water systems. This program was co-administered with the Department of Environmental Quality providing technical expertise and the DNRC bureau providing financing expertise. The bureau took on a project last fall that implemented this type of financing. The Fort Peck Rural County Water District, just outside the town of Fort Peck, had been working to build a \$7 million drinking water system for ten years from its inception to the federal financing. They had been back to Congress for the last three years and this August they let bids for the project. At the same time, they had \$1.5 million of final appropriation authority going through the federal government's process. When the bids came in they fit the budget, but the granting agencies, as typically is done with the grant programs, would not allow them to spend any of these monies until they could demonstrate they could complete the project and

total financing was in place. Congress had not acted and, as it turned out would not act for another month and a half, so this small committee working on this project for ten years was faced with contracts that fit within their budget and granting agencies saying that unless they tie up all the loose ends the agencies could not start to give them funds. At that point, the State Revolving Fund Program stepped in. They agreed to lend the money to the project and granted an anticipation note and carried that risk over the last 90 days and thought Congress would appropriate that \$1.5 million. The state DNRC bureau would be paid back with those federal appropriations. This process allowed the project to close the contracts and accept the bids. Congress appropriated money so the project never had to borrow other monies. Pledging this guarantee of financing until the next congressional session allowed the project to accept bids and move forward. This process would apply the same support to the Dry Prairie and North Central projects. DNRC would never lend a project \$200 million. A project needing \$5 million or \$10 million to keep forward before the next federal appropriations would be assisted under this bill and be provided that cost gap. With that comes some risk if the federal government doesn't appropriate the money. These programs provide gap financing. The State Revolving Fund Program was a federal grant to the State of Montana to develop an in perpetuity revolving loan fund. The federal government gave us the dollars which now amount to over \$100 million right now in the portfolios. We lend those dollars out to communities and then they pay us back. Then we take the same monies and lend them out to the next community. So in a sense through this legislation, the federal government is just taking a risk on their own program that they endowed to the state. The one casualty that could happen would be if the federal government did not appropriate the funds. The whole point of **HB 45** is to make construction projects with big federal dollars somewhat reasonable for the local governments. **HB 45** would just make it a little easier for the local folks to get through that process.

***{Tape : 1; Side : A; Approx. Time Counter : 13.5 - 18.6}***

**Dan Keil, Farmer and Chairman, North Central Rural Water Authority** spoke in support of **HB 45**. **Mr. Keil** stated that the North Central Rural Water Authority project was one of those that this legislature and past legislatures have supported and they appreciated all the efforts that legislature had given in getting these projects going. This bill would give some stability to contracts when they came in.

***{Tape : 1; Side : A; Approx. Time Counter : 18.7 - 20.5}***

**Opponents' Testimony:** None.

**Questions from Committee Members and Responses:**

**SEN. MACK COLE** questioned whether the state was looking for funds for both of these projects or just one of them. **REP. WITT** advised this bill was aimed at both projects and stated the Dry Prairie project was a little ahead of the North Central project at this point. **SEN. COLE** asked whether any funding or loans were going to the reservations or was everything off the reservation. **Mr. Tubbs** advised it was anticipated his bureau would be working with the rural water authorities. He stated this bill was very broad and would include any federally-authorized project including these two regional water system projects. The Lockwood Sewer District, just outside of Dillon, had a \$28 million project to put sewers in the community of Lockwood with over 7,500 residents. Currently, there was no sewer system there and ground water was contaminated. With **HB 45**, the Lockwood community will be able to borrow interim gaps of money over the course of the construction of that project through the wastewater revolving fund. With a \$28 million construction project, the issue of funding was not going to end in one year so the project would have to go back to Congress a couple of times. **HB 45** provided a loan, which had to be paid back with interest, for a local government within the state. Ultimately, the districts borrowing the money would bear the interest cost.

***{Tape : 1; Side : A; Approx. Time Counter : 20.8 - 24.5}***

**Closing by Sponsor:**

**REP. WITT** stated these projects were going to have quite an economic impact to northcentral Montana and the long-term impact was most important to the people, their health and future. Ninety-five percent of the people of Liberty County would be impacted with this project. **REP. WITT** hoped everyone would have the opportunity to see the quality of the people's well water in Dry Prairie which had been put on display there showing water unsuitable to wash one's hands in. **REP. WITT** closed by stressing the importance of supporting **HB 45**.

**CHAIRMAN CRISMORE** closed the hearing on **HB 45**.

***{Tape : 1; Side : A; Approx. Time Counter : 24.5 - 26.2}***

**HEARING ON SB 270**

**Sponsor:** **SEN. KEN TOOLE**, SD 27, Helena

**Proponents: Daniel Casey, Montana Human Rights Network**

**Opponents: Jon Metropoulos, Flathead Joint Board of Control**

**Opening Statement by Sponsor:**

**SEN. KEN TOOLE, SD 27, Helena**, opened by saying that **SB 270** was a bill that came from a project he was working on dealing with relationships around Indian issues. One of the things that he found around areas of the state, particularly in the Flathead area, was there were significant numbers of people who found themselves buying property on reservations and were unaware of potential tribal jurisdiction over some of their activities on the reservation. When they found out about those jurisdictional issues they became quite upset about the tribal government and their activities. One of the conclusions was to make sure that in the closing documents of real estate transactions, that we take a "heads up" so people knew about possible jurisdictional issues. Line 15 of **SB 270** stated "that the property may be subject to the jurisdiction of a tribal government". **SEN. TOOLE** talked with a number of people in tribal governments, particularly in the Flathead area, and also the coordinator of Indian Affairs. An amendment was suggested that the state could not require tribal government or tribal members to include this kind of notice.

***{Tape : 1; Side : A; Approx. Time Counter : 26.4 - 29.3}***

**Proponents' Testimony:**

**Daniel Casey, Montana Human Rights Network**, rose in support of **SB 270**. The Montana Human Rights Network was a not-for-profit, non-governmental organization comprised and affiliated with local organizations which promoted human rights and human rights awareness through research, community education and legislative efforts in the state. **Mr. Casey** stated the reason his organization had taken interest in this sort of legislation, and particularly in **SB 270**, was the bill actually had something to do with racial relations. The Montana Human Rights Network research showed, on the American Indian reservations with mixed tribal and non-tribal populations, that people did not know or understand what they were getting into when they bought properties on reservations. Later they found out there were some tribal jurisdictional issues. The result could be estranged relations between the tribal and non-tribal populations. The Montana Human Rights Network believed that the tensions or conflicts that arose periodically on the reservations were, at least in part, a result of a lack of awareness and misunderstandings concerning tribal jurisdiction. **SB 270** could not clear up all the complicated

issues and sub-issues regarding property rights on the reservation and it did not attempt to. The Montana Human Rights Network saw **SB 270** as a positive pro-active step toward preserving and improving relations between the tribal and non-tribal populations in Montana. They supported **SB 270** and urged passage of the bill.

**{Tape : 1; Side : A; Approx. Time Counter : 29.4 - 31.4}**

**Opponents' Testimony:**

**Jon Metropoulos, Flathead Joint Board of Control**, spoke in strong opposition to **SB 270**. The Flathead Joint Board of Control was a central operating authority that was a local government of the Montana statutes for three irrigation districts, which were also local government under Montana statutes. All four of those entities partook of the sovereignty and some immunity of the State of Montana. Within those three districts there are 113,000 irrigated acres. That irrigated land accounted for between \$30 million and \$43 million of economic activity every year. All that land was owned in fee; most of it by non-tribal members but some by tribal members. All of that land, whenever it was ever transferred, would be subject to this proposal with the exception of the proposed amendment. This proposal, which the proponent from Montana Human Rights Network characterized as serving as a general "heads-up", would lower property prices because it would indicate to the potential buyers that there was actually some problem with the governmental control over that property. In fact, it would indicate to any buyer that was a non-member of the Flathead Tribe whether that person was a non-Native American or a Native American from another tribe that they might have no right to participate in the government that would exercise control over their use of that property. There was "slim to no basis" in federal law for the assertion that a tribe might generally have jurisdiction over property not owned by the tribe or tribal member. It just did not exist and federal law would control in that area. So a general "heads-up" like this was not grounded in federal law and in fact would reduce property values. People generally liked to have the chance to not only talk to those who made laws that controlled their activities in their land, but to vote. Non-tribal members do not have that right. They can not vote for any tribal official and they cannot become a tribal official so they object to having tribal jurisdiction over their land. On the Flathead Reservation, there are about 22,000 people. Eighty percent of them are not tribal members. Non-tribal members own fifty percent of the reservation land mass which was about 1.2 million acres. Non-tribal members owned ninety percent of the arable land within the reservation. Eighty percent of the population would be disenfranchised. The sponsor



suggested amendments excluding the tribe and tribal members from this law. Those are the only people and entities over which the tribe clearly did have jurisdiction. Those are the only people that it would make sense to have this disclosure for. **Mr.**

**Metropoulos** stated that **SB 270** lacked merit whether amended or not and urged a "no" vote.

*{Tape : 1; Side : B; Approx. Time Counter : 0.0 - 5.7}*

**Questions from Committee Members and Responses:**

**SEN. KEN MILLER, SD 11, Laurel**, asked for clarification relating to the line in the bill stating "subject to the jurisdiction of a tribal government". **SEN. TOOLE** stated that tribal government had the authority of issuing dock permits around the south half of Flathead Lake and the tribal government could require tribal licenses to hunt or fish on property on a reservation. The tribal government would have some jurisdiction and **SEN. TOOLE** was surprised to hear an argument that there were not activities the tribal governments didn't have jurisdiction over regarding land owners' use of property on reservations. He wondered what had been going on with all the fighting about docks and other issues up at Flathead. **SEN. TOOLE** stated it was not the intent of this bill to say that the tribal government exercised jurisdiction over the property but that there might be some aspects of the use of the property and enjoyment of the property that might be affected. **SEN. MILLER** stated that it would be similar to different jurisdictions a city or government or sub-division would have and asked if **SEN. TOOLE** was aware of any of those government entities required to provide disclosure regarding jurisdiction. **SEN. TOOLE** responded that it seemed similar. Many people fully expect when they are within the jurisdiction of a county or city or state, that those political entities are going to have jurisdiction over the use of the property in terms of zoning and sewer permits. On Indian reservations, many people are caught unaware. The testimony of the opponent demonstrated that the jurisdictional issues are less clear when you were dealing with these particular kinds of entities and that was exactly why it was worded with "may be subject". Many title companies on the Flathead reservation were already providing this disclosure but it was not universal.

*{Tape : 1; Side : B; Approx. Time Counter : 5.7 - 9.2}*

**SEN. COCCHIARELLA** asked if the bill required written notice for a general "you are living on the reservation" or would it be specific to the property being sold. **SEN. TOOLE** said it was specific to the property. It had to do with real estate transfer or transaction. **SEN. COCCHIARELLA** said her husband had been a

teacher on the reservation for 22 years and they had gotten to know tribal and non-tribal members of all kinds. One of the huge problems that people were not aware of, when they moved into the valley, were tribal rights regarding water. Property was sold with no water rights following with that property. Without this legislation, she wondered how a buyer would become aware that this huge home and irrigated property would have no water rights.

**Mr. Metropoulos** thought **SEN. TOOLE** alluded to one of the ways someone might be aware and that was the title insurance might mention that there was an exclusion because of assertions made by a tribe not because of authority the tribe actually had. On his home, three blocks west of the capitol, the title insurance had an exclusion for aboriginal claims brought by a tribe. That might be true in many of the parcels there on the reservation. As far as water rights go, they were not settled on the Flathead Reservation as they were not settled in many places. There were some issues unique to the Flathead Reservation. If land was within the irrigation districts, there was a water right. It was unclear how much water and to what priority or what the other restrictions were. **SEN. COCCHIARELLA** asked **SEN. TOOLE** if some people were being notified by title companies. **SEN. TOOLE** replied that was his understanding. **SEN. COCCHIARELLA** asked if that was the case, if the bill was an attempt to change property values or buy/sell or was it an extension or expansion of what some title companies sometimes do. **SEN. TOOLE** said when he got this bill and started looking into the issue that he found out title companies sometimes are already flagging this issue for people. His intent or hope would be that if this bill passed that this would be a uniform practice around reservations. He also emphasized that this bill did not try to resolve any of the jurisdictional complexities as that was up to the tribe to make sure that when someone purchased land on the reservation that they were aware those issues might arise. He hoped that many people would already be aware but found that through this project that many people were not aware of this issue.

***{Tape : 1; Side : B; Approx. Time Counter : 9.2 - 14.2}***

**SEN. ROUSH** noted that there was no representation to testify for or against this bill from tribal governments. He comes from an area that represented a tribal government. The intent of the language addressed property being bought or sold on mainly tribal trust land or any type of land on reservations. He asked about agreements there were on reservations now whereby a person regardless of racial status would sell their property within the boundaries of a reservation. On the Blackfeet Reservation if the tribe cannot find financial aid to buy property, then that land could be sold to other parties. **SEN. TOOLE** said he was aware of the concept and his impression from talking with tribal

governments before the session was that there was a range of different things out there and some tribes had a stated goal of trying to re-purchase land as it came available and revert back to tribal ownership. Others clearly would like to do that, but it was not a stated policy and not an ordinance. His impression was that across all of the tribes in Montana that it was not uniform. He stated he would like to speak to the tribal entities that he consulted about this bill. All of the tribal governments were given a copy of this bill.

***{Tape : 1; Side : B; Approx. Time Counter : 14.2 - 17.6}***

**SEN. COLE** thought the bill had merit clearing up some things whether it was section two or talking about allotted land or trust land that was owned by the tribe which was not for sale. He thought if this was going to be beneficial there should be something in the bill that helped explain what the jurisdictions were. Each reservation's jurisdiction had some very different rules and regulations depending on where they came in with the federal government or with their own government relating to how the reservations were set up. The bill was a very broad statement. **SEN. TOOLE** said he would be willing to put something together like that.

***{Tape : 1; Side : B; Approx. Time Counter : 17.6 - 19.5}***

**SEN. GROSFIELD** wondered about writing in the requirement of title companies to disclose this information versus the seller. **SEN. TOOLE** said title companies were not always involved in real estate transactions and usually the sale had been by the seller or the seller's agents. **SEN. GROSFIELD** asked **SEN. TOOLE** if he was aware of specific problems relating to this issue on any other reservations or was this just a situation specific to the Flathead area. **SEN. TOOLE** said he would be amazed if this was just the Flathead. The complexity over taxation around the Crow reservation was another situation where there had been confusion on jurisdictional issues. **SEN. GROSFIELD** wondered about any other issues besides dock permits. **SEN. TOOLE** said hunting was an issue and the controversy was that people did not understand if they wanted to give access to their land that people had to have tribal permits as well. That was why "may have jurisdiction" was used. The intent was to address the complexity of a variety of activities. **SEN. GROSFIELD** said he appreciated the concern about this being very broad and could imagine the concern about the value or the sellability of property. He addressed problems with land transfers. **Jon Metropoulos** said misunderstandings do arise and he thought they were not the product of ignorance because most people who bought land understood whether they were buying within a city or state or

within a reservation. Tribes, like any government, change and evolve. Some tribes, particularly the Flathead tribe, have evolved into a certain jurisdictional variety of things that they did not assert thirty, fifty, or eighty years ago. So it was the change in those circumstances not in the ignorance in particular that had caused these problems. That was not to say the tribe did not have the right to assert its jurisdiction but he did not think that putting that on everyone but the tribe was the way to address that. In fact, this would be cause for more conflict and not less. Those 18,000 people living there that were not tribal members, eighty percent of the population, were going to feel, again, like they had a burden on them which the tribal members were not subject to. **SEN. GROSFIELD** said some of the paperwork in a real estate transaction would indicate what county the property was in. He asked if there was anything that was going to indicate that the land was within the boundaries of an Indian reservation. **Jon Metropoulos** said there was signage on the reservation at the borders. The Flathead, Crow, and Rocky Boys signage might be missed as they were not neon. **SEN. GROSFIELD** said, in the water rights arena, there were stipulations on the permit. For example, the DNRC granted a permit subject to the general adjudication that goes on. DNRC did not issue any permit that did not have that kind of stipulation on it. Selling real estate also involved transfer of water rights. **Jon Metropoulos** stated that type of language was included on permits that were issued but not on the actual water rights. That sort of notion was put on every person and every purchase of property in the state advising there was government here and government may, somehow, alter the rules under which you lived right now. Currently a large debate in this area is land use planning. Anyone who bought their homes, whether it was five years ago or fifteen years ago, was subject to change and evolution involving their government. **SEN. GROSFIELD** said he thought decreeing water rights by the water court already flagged this same subject regarding possible reserved water rights. This bill suggested the same type of information be revealed. **Jon Metropoulos** stated he understood the bill was to clarify some of this and reduce conflict though he felt it would not provide clarification and only would increase conflict, especially if tribal governments and tribal members were amended out of this proposed bill.

**{Tape : 1; Side : B; Approx. Time Counter : 19.5 - 31.8}**

**VICE-CHAIR MAHLUM** questioned the language on line 15 of the bill where it stated "sale to the buyer that the property may be subject to the jurisdiction of a tribal government". He asked if the tribal government could have covenants of the tribe and state that they have the first right of refusal to buy that property back to put back into the tribe's inventory. **Jon Metropoulos**

stated that the tribal government had the authority to enact such ordinances designed to gather taxes or extend power over land but felt they did not have the governmental authority to enforce that. **VICE-CHAIR MAHLUM** questioned that if he was to buy a piece of property on a reservation, he would not really know whether he had it bought or not until the tribal government refused its right to that property. **Jon Metropoulos** said if such an ordinance for the tribe's first right of refusal was enacted, one would have to expect that delay in outcome until one were notified that the tribe had refused its right to purchase. **VICE-CHAIR MAHLUM** said if he was buying this property on a reservation, then would it be his own responsibility to find that information out or would the selling agent representing him be responsible to make sure that he had the right to hunt on his land he was purchasing. **Jon Metropoulos** stated that hunting rights and dockage rights were separate from property rights. The reason that the Flathead tribes could require permits for putting in a dock on the south half of Flathead Lake was because they owned that lake. It was not property that someone else owned. The right to hunting of wild animals did not belong to the property owner but to the federal or state or tribal governments. In the course of buying land, one could not insure that one could hunt on it because that right was given subject to land ownership issues.

*{Tape : 2; Side : A; Approx. Time Counter : 0 - 3.6}*

**SEN. GROSFIELD** suggested alternate language on line 15 of this bill. Striking out the rest of the sentence after the word "property" and inserting "lies within the boundaries of an Indian reservation". **SEN. TOOLE** stated he didn't think he would have a problem with that. He found it interesting in listening to this discussion that the same concerns were being raised that motivated this proposed bill; the matter of tribal jurisdiction in the free enjoyment of property that one might purchase within a reservation. **SEN. TOOLE** stated that **Mr. Metropoulos** made a good point by stating that hunting and dockage rights were not a land ownership issue. **SEN. TOOLE** stated that it certainly was about the free enjoyment and the expectation that purchasers have and that was what he was trying to address. Another potential amendment would be that activities pursuant to the free enjoyment of the property may be subject to tribal jurisdiction. **Mr. Metropoulos** stated he had no authority to respond on behalf of his clients regarding this but he thought it seemed like a reasonable idea to him.

*{Tape : 2; Side : A; Approx. Time Counter : 3.6 - 6.3}*

**SEN. COLE** stated that this was what he was getting at when he expressed that this bill was too broad, that it might cause more confusion when going into trust lands or allotted lands. There were so many variations on every reservation. Unless they set somebody up to identify all of these variations of tribal jurisdiction it would make the seller have a lot of work to do. Maybe if the language could be worded to say that you were buying land on the reservation and buyer "beware". **SEN. TOOLE** stated that was his exact intent to make the buyer aware that there were questions to be asked.

*{Tape : 2; Side : A; Approx. Time Counter : 6.3 - 7.8}*

**CHAIRMAN CRISMORE** asked if anyone had a suggestion of amendments to offer to this so that we could proceed with one amendment versus each one coming in with a different amendment. **Mr. Metropoulos** stated he would certainly take this proposal back to his client and stated that the language in the bill could be improved and also suggested that a section be added to state that this acronym in no way recognized or enhanced any legal argument that a tribe might have to jurisdiction over that land. **CHAIRMAN CRISMORE** suggested **SEN. GROSFIELD** aid in articulation of the language of the amendment and **SEN. TOOLE** stated he sure was willing to work more on this proposal.

*{Tape : 2; Side : A; Approx. Time Counter : 7.8 - 10.1}*

**Closing by Sponsor:**

**SEN. TOOLE** closed by saying that he looked forward to working with others on the proposal of amendments and was interested in public comment regarding **SB 270**.

**CHAIRMAN CRISMORE** closed the hearing on **SB 270**.

*{Tape : 2; Side : A; Approx. Time Counter : 10.1 - 10.7}*

**EXHIBIT**(nas17a02), Amendments to SB 270 (SB027001.aem) were received February 1, 2001. The amendments change the time that the seller must notify the buyer that the property may be subject to the jurisdiction of a tribal government from the time of sale to prior to closing.

**EXECUTIVE ACTION ON SB 31**

**Motion:** SEN. MCCARTHY moved that **AMENDMENTS TO SB 31 BE ADOPTED, EXHIBIT (nas17a03),** (SB003101.amv).

**Discussion:**

**Mary Vandebosch** explained the amendments to **SB 31**. The first amendment inserted "EXTENDING THE DEADLINE FOR FILING AN APPLICATION FOR A HISTORIC RIGHT-OF-WAY DEED" following the word "UTILITIES;". The other two amendments regarded a typographical error on page one, lines 24 and 25 in that stricken was 1977 and replaced with the correct year of 1997. **Bud Clinch** stated he was comfortable with the expansion of the title.

**Voice Vote:** Motion that **AMENDMENTS TO SB 31 BE ADOPTED** carried unanimously. Vote was 11-0.

**Motion:** SEN. MAHLUM moved that **SB 31 DO PASS AS AMENDED**.

**Discussion:** SEN. TOOLE questioned how fair market value was established on these lands. **Bud Clinch** responded that the procedure DNRC used was they calculated the affected acreage and then referred to the comparable sales on real estate in that county and then came up with a comparative sales basis for like acreages and then assess that value. **VICE-CHAIR MAHLUM** questioned if mediation of the assessed value occurred. **Bud Clinch** advised that the owner of these properties was the state of Montana as these lands were state school trust lands and he represented that ownership by the state.

**Vote:** Motion that **SB 31 DO PASS AS AMENDED** carried unanimously. Vote was 11-0.

*{Tape : 2; Side : A; Approx. Time Counter : 10.7 - 20.7}*

**EXECUTIVE ACTION ON SB 126**

**SEN. TAYLOR** moved **SB 126** for discussion. **SEN. TAYLOR** stated that he understood the concept of this bill but questioned the language in the bill regarding the level of only three emissions before enforcement of fines ensued and felt that was too strict. **SEN. TOOLE** noted the resistance at the hearing regarding stack-specific monitoring and also understood there was difficulty in enforcement at the state level because of the lack of stack-specific monitoring. He stated the equipment was already in place and it raised suspicion to him that there was such resistance. **CHAIRMAN CRISMORE** and **Bob Raisch, Chief, Resource Protection Planning Bureau, Montana Department of Environmental**

**Quality**, explained the bill. **Mr. Raisch** stated that this bill would strengthen the one hour state standard for sulfur dioxide emissions. Under current law it allowed eighteen exemptions and now would reduce those to three exemptions. It also would require the state to develop emission control plans for both Billings and East Helena, the two communities having multiple sources of sulfur dioxide. Currently these two facilities follow the federal and state implementation plans and showed compliance with the national ambient air quality standards. Currently federal techniques were being used to comply with the state standard. **SB 126** would require taking that federal perspective and technique of computer modeling to see if additional reductions were necessary for compliance with the stricter state standards. This would require a plan when the state actually measured a violation out in the communities. The state would have to do computer modeling and that would require substantial reductions in the emission limits that were on those sources right now. Since these facilities were operating well below those limits, it might not be that significant. **SEN. MILLER** said he thought industry was doing a reasonable job in controlling and monitoring and detecting. He did not see the need for **SB 126**.

**Motion/Roll Call Vote:** **SEN. MILLER** moved that **SB 126 BE TABLED**.  
**Motion carried 9-2 with Cocchiarella and Toole voting no.**

*{Tape : 2; Side : A; Approx. Time Counter : 20.8 - 32.5}*

#### **EXECUTIVE ACTION ON HB 44**

**SEN. MILLER** moved the bill for discussion. **Mary Vandebosch** explained the amendment. On page one, line 14 of the bill following "agencies" inserted was "recommend legislation to".

**Motion/Voice Vote:** **SEN. MILLER** moved that **AMENDMENTS TO HB 44 BE ADOPTED**. **EXHIBIT(nas17a04), (HB004401.amv)**. **Motion carried unanimously.** Vote was 9-0.

**Motion/Voice Vote:** **SEN. MILLER** moved that **HB 44 BE CONCURRED IN AS AMENDED**. **Motion carried unanimously.** Vote was 9-0. **SEN. KEN MILLER** offered to carry this house bill on the senate floor.

*{Tape : 2; Side : B; Approx. Time Counter : 0.0 - 2.0}*

#### **EXECUTIVE ACTION ON HB 45**



**Motion:** SEN. ROUSH moved that **HB 45 BE CONCURRED IN.**

**Discussion:** SEN. TAYLOR questioned that there was not a fiscal note requested on **HB 45**. There was some discussion relating to funding coming from the state revolving loan fund program that already existed.

**Voice Vote:** Motion that **HB 45 BE CONCURRED IN** carried **unanimously**. Vote was 9-0. **SEN. MACK COLE** offered to carry this house bill on the senate floor.

***{Tape : 2; Side : B; Approx. Time Counter : 2.0 - 5.2}***

**ADJOURNMENT**

Adjournment: 4:34 P.M.

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SEN. WILLIAM CRISMORE, Chairman

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NANCY BLECK, Secretary

WC/NB

**EXHIBIT (nas17aad)**